

**REMARKS/ARGUMENTS**

Claims 1-13 are currently pending. Claims 1 and 7 have been amended. Claim 13 was amended to correct a minor typographical error. None of the claims have been cancelled. Therefore, claims 1-13 will remain pending in this application after entry of this amendment.

As a preliminary matter, the Applicant thanks Examiner Simpson for clarifying that the outstanding office action does not include a restriction requirement during a brief telephone call on January 16, 2009. The Examiner stated that box number 8 on page 1 of the Office action was inadvertently checked.

**Claim Rejections – 35 U.S.C. § 102**

Claims 1-13 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,517,978 to Levin (“Levin”).

**Independent Claim 1**

Independent claim 1 is directed to a lancing device. The lancing device includes (a) “a main housing having an internal surface enclosing a portion of a lancing mechanism, the lancing mechanism including a lancet holder attached to a shaft and a drive spring surrounding a portion of the shaft, the drive spring being located adjacent to and between the lancet holder and the internal surface at a first end of the main housing, the lancing mechanism being adapted to move between a resting position, a cocking position, and a puncture position” and (b) “a movable housing having a first end adjacent the first end of the main housing, the movable housing being adapted to move from a resting position to a cocking position, the moveable housing having an internal surface enclosing a portion of the shaft of the lancing mechanism, the enclosed portion of the shaft having a retainer and a secondary spring surrounding at least a section of the shaft, the secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at the first end of the movable housing”. Claim 1 further recites that “the secondary spring is adapted to move the movable housing from the cocking position in which the movable housing is separated from the main housing to the resting position to the resting position”.

Levin does not disclose, teach, or suggest “a main housing having . . . a lancet holder attached to a shaft”, as in claim 1. The Office Action equates the main housing of claim 1 to the fixed tubular member 5 of Levin, the lancet holder of claim 1 to the needle holder 25 of Levin, and the shaft of claim 1 to the square shaft 29 of Levin. Office Action, p. 2. However, the

needle holder 25 of Levin is **not attached to the square shaft 29**. Both the needle holder 25 and the square shaft 29 of Levin are attached to a plunger member 21, which **separates** the needle holder 25 from the square shaft 29. *See* Levin, FIGs. 2-4, col. 2, ll. 15-16 (stating that the plunger member 21 “has a socket 23 at its forward end for receiving a needle holder 25”), col. 2, ll. 20-21 (stating, “Plunger 21 has a square shaft 29 extending to the rear . . .”).

Levin also does not disclose, teach, or suggest a “drive spring being located adjacent to and between the lancet holder and the internal surface at a first end of the main housing,” where the “movable housing [has] a first end adjacent the first end of the main housing,” as in claim 1. The Office Action equates the drive spring of claim 1 with the main spring 37 of Levin. Office Action, p. 2. The main spring 37 of Levin, however, “extends between the shoulder 31 of the tubular member 5 and a shoulder 39 formed on plunger 21”. Levin, col. 2, ll. 26-29 (emphasis added). Thus, the main spring 37 of Levin is not located **adjacent to the lancet holder**, as in claim 1 but, rather, is located adjacent to the plunger member 21. Furthermore, the shoulder 31 of the tubular member 5 is not “adjacent to [a] first end of the movable housing” (i.e., the outer sleeve 47). Rather, since the outer sleeve 47 is slidably mounted over the fixed tubular member 5, it is adjacent to the **entire outer periphery** of the fixed tubular member 5, **not** a first end as in claim 1.

Moreover, Levin does not disclose, teach, or suggest a “secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at the first end of the movable housing”, where the first end of the movable housing is “adjacent the first end of the main housing,” as in claim 1. The Office Action equates the bounce back spring 45 of Levin with the secondary spring of claim 1. Office Action, p. 2. The bounce back spring 45 of Levin, however, is located between a flange 43 and an abutment 49 positioned in a central portion of the outer sleeve 47. *See* Levin, FIG. 3. Thus, the “secondary spring” 45 of Levin is not “adjacent to” an internal surface of the first end of the “movable housing” 47. This is particularly evident given that the first end of the movable housing of claim 1 is “adjacent to the first end of the main housing”.

Finally, claim 1 recites that “the secondary spring is adapted to move the movable housing from the cocking position in which the movable housing is separated from the main housing”. Nowhere does Levin disclose separating the outer sleeve 47 from the fixed tubular member 5. In fact, when the device of Levin is cocked, the fixed tubular member 5 is pulled

back along with the outer sleeve 47 so that the finger 33 may engage the hole 35 and the spring 37 becomes compressed. *See, Levin, col. 2, l. 65 – col. 3, l. 2, FIGs. 2-3.* Thus, the outer sleeve 47 is never “separated from” the fixed tubular member 5.

Thus, claim 1 is believed to be allowable over Levin for at least these reasons. Claims 2-6, which depend from claim 1, are also believed to be allowable for at least these reasons.

#### **Independent Claim 7**

Claim 7 is directed to a method for damping a lancet. The method comprises providing a lancing device including (a) “a main housing having an internal surface enclosing a portion of a lancing mechanism, the lancing mechanism including a lancet holder attached to a shaft and a drive spring surrounding a portion of the shaft, the drive spring being located adjacent to and between the lancet holder and the internal surface at a first end of the main housing, the lancing mechanism being adapted to move between a resting position, a cocking position, and a puncture position” and (b) “a movable housing having a first end adjacent the first end of the main housing, the movable housing being adapted to move from a resting position to a cocking position, the moveable housing having an internal surface enclosing a portion of the shaft of the lancing mechanism, the enclosed portion of the shaft having a retainer and a secondary spring surrounding at least a portion of the shaft, the secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at the first end of the movable housing”. The method further comprises (a) “compressing the drive spring and the secondary spring by moving the movable housing away from the main housing to the cocking position”, (b) “decompressing the secondary spring to move the movable housing from the cocking position to the resting position, adjacent the main housing”, (c) “actuating the drive spring to cause the lancet holder to move from the cocking position to the puncture position”, (d) “recompressing the secondary spring as the lancet holder moves from the cocking position to the puncture position”, and (e) “decompressing the secondary spring to move the lancet holder from the puncture position to the resting position.”

The Applicant respectfully submits that claim 7 is allowable for at least the reasons presented above with respect to claim 1. Namely, Levin does not disclose, teach, or suggest:

- “a main housing having . . . a lancet holder attached to a shaft”;

- “a drive spring being located adjacent to and between the lancet holder and the internal surface at a first end of the main housing,” where the “movable housing has a first end adjacent the first end of the main housing”;
- a “secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at a first end of the movable housing”; or
- “moving the movable housing away from the main housing to the cocking position”.

Therefore, the Applicant respectfully submits that claim 7 and claims 8-13, which depend from claim 7, are patentable over Levin for at least these reasons.

### CONCLUSION

The Applicant submits that the claims are in a condition for allowance and action toward that end is earnestly solicited. It is believed that no fees are due; however, should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Nixon Peabody Deposit Account No. 50-4181, Order No. 247082-000155USPX.

Respectfully submitted,

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